

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Nathan Christopher Braun,

Civ. No. 22-528 (ECT/BRT)

Plaintiff,

v.

ORDER

State of Minnesota, Municipal Capacity,
et al.

Defendants.

This Court previously requested that the Minnesota Department of Corrections (“MDOC”) supply financial information from the prison trust account of Plaintiff Nathan Christopher Braun showing the average deposits to and balance of that account for the six months preceding the filing of this action. (*See* Doc. No. 3.) This financial information is necessary for calculating the initial partial filing fee owed by Braun at the outset of this action. *See* 28 U.S.C. § 1915(b) (requiring that the Court assess an initial partial filing fee based on the average monthly balance and deposits “in the prisoner’s account for the 6-month period immediately preceding the filing of the complaint.”).

The Court has now received from MDOC financial documentation regarding the average monthly balance and deposits to Braun’s prison trust account during the months of October 2021 through March 2022. (*See* Doc. No. 9.) Because this action was filed on March 2, 2022, the financial information from March 2022 is largely irrelevant to determining the initial partial filing fee owed for this matter, as most of March 2022 did

not *precede* the filing of the complaint. Accordingly, the Court will calculate the initial partial filing fee owed in this matter based on the average balance and deposits for the *five* months preceding the filing of this action—that is, October 2021 through February 2022. According to the documentation submitted by MDOC, Braun received an average of \$43.04 per month in deposits during this five-month period, and he had an average monthly balance of \$23.28. (*See* Doc. No. 9 at 1.) Because the deposits amount exceeds the balance amount, Braun’s initial partial filing fee in this case, under the formula prescribed by 28 U.S.C. § 1915(b)(1), will be 20% of the average deposits amount, or \$8.61.

This action will not go forward until Braun’s initial partial filing fee of \$8.61 has been paid in full. If Braun elects to pursue this action through payment of the \$8.61 initial partial filing fee, the entirety of the remaining balance of the \$350.00 statutory filing fee will have to be paid in later installments.¹ Prison officials will be ordered to deduct funds from Braun’s trust account and submit such funds to the Court, as provided by § 1915(b)(2), regardless of whether Braun succeeds in this action. If Braun does not pay his initial partial filing fee within 20 days of the date of this order, he will be deemed to

¹ The statutory filing fee for new actions commenced in a federal district court is \$350.00. 28 U.S.C. § 1914(a). On December 1, 2020, the district courts began to assess an additional \$52.00 administrative fee, raising the total fee to \$402.00. The PLRA, however, applies only to the statutory filing fee. Thus, Braun will be required to pay the unpaid balance of the \$350.00 statutory filing fee—not the \$402.00 total fee—in installments pursuant to § 1915(b)(2).

have abandoned this action, and it will be recommended that the case be dismissed without prejudice for lack of prosecution. *See* Fed. R. Civ. P. 41(b).

Finally, Braun requests that, due to MDOC's failure to supply financial information for the appropriate six-month period, he be excused from the requirement that he submit the initial partial filing fee in this matter. (*See* Doc. No. 10.) That motion is denied. Section 1915(b) does not permit the Court to excuse a prisoner-litigant from the obligation to pay an initial partial filing fee except in instances where the litigant is found to have "no assets and no means by which to pay the initial partial filing fee." 28 U.S.C. § 1915(b)(4). The financial documentation submitted in this matter shows that Braun does have the assets and means to pay the initial partial fee required of him in this Order. (*See* Doc. No. 10 at 1) (showing an account balance of \$91.90 on February 28, 2022, an account balance of \$29.28 on March 31, 2022, and an account balance of \$28.64 on April 19, 2022.) Braun must pay the initial partial filing fee at the outset of this litigation if he intends to prosecute this action.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Plaintiff Nathan Christopher Braun must pay an initial partial filing fee of at least \$8.61 within 20 days of the date of this order, failing which it will be recommended that this action be dismissed without prejudice for failure to prosecute.
2. Braun's motion to proceed without paying an initial partial filing fee (Doc. No. 10) is **DENIED**.

Dated: May 17, 2022

s/ Becky R. Thorson
BECKY R. THORSON
United States Magistrate Judge